No. 63.
Br. of Ridout for D. E.

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OCTOBER TERM, 1900.

No. 63.

S. A. AND S. C. HASELTINE, AND S. I. AND L. K. HASELTINE, PLAINTIFFS IN ERROR,

vs.

THE CENTRAL NATIONAL BANK OF SPRINGFIELD, MISSOURI.

BRIEF FOR DEFENDANT IN ERROR.

JNO. RIDOUT,
Attorney for Defendant in Error.

LAW REPORTER PRINT.

IN THE

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BRIEF FOR DEFENDANT IN ERROR.

The principal question in this case is whether usurious interest actually paid on certain notes can be set off in an action brought to recover upon a single note representing the aggregate amount of such smaller notes and which was given in renewal of them. At the time the note sued on was given, $40.65 was deducted or retained from the proceeds of the note in suit. The court below gave judgment for plaintiff for the sum of $2,199, with interest thereon at the rate of 8 per cent *per annum* from the date of the judgment until paid and costs, thus deducting from the face of the note the amount reserved for usurious interest (Rec., pp. 4, 10, 16).

The plaintiffs in error appealed to the Supreme Court of the State of Missouri, by which court the judgment below was affirmed (Rec., p. 18).

The plaintiffs in error thereupon sued out the writ of

error under which the Record has been brought to this court (Rec., p. 1).

Points and Authorities.

It is submitted that the writ of error was not allowed by the proper authority, the allowance appearing to have been made by "Theo. Brace P. Judge Division No. 1, Supreme Court of Missouri." (Rec., p. 1.)

It would seem to have been decided by this court repeatedly that the writ of error must be allowed either by the chief justice of the Supreme Court of a State or by a justice of this court.

If this contention be correct, this court will take notice of the insufficiency of the allowance and dismiss the writ of error.

If, however, the court should be of opinion that the writ of error was properly allowed, then it is submitted that upon the merits, the judgment below should be affirmed for the reasons hereinafter set forth.

The case really involves the construction of section 5198 of the Revised Statutes of the United States.

The assignments of error, which are five in number, raise only two questions. Those numbered from one to four, inclusive, raising the question last above stated, and the fifth, raising the question of the rate of interest, which should have been allowed by the court below.

As to the first question, it is contended that the construction of section 5198 has for a long time been finally settled in this court, the established construction being:

That by said section a new right and a new remedy were created, and that the remedy provided by that section is exclusive of any other.

Barnett *vs.* National Bank, 98 U. S. 558.
Driesbach *vs.* National Bank, 104 U. S. 52.

Stephens *vs.* Monongahela Nat. Bank, 111 U. S. 197.
Carter *vs.* Carusi, 112 U. S. 478.

It follows that under said section 5198 the plaintiffs in error were not entitled to the set offs claimed by them, and were only entitled to the deduction which was actually made.

The plaintiffs in error seek to meet this construction by claiming—

(a) That it is opposed to the laws of the State of Missouri, and the decisions of the Supreme Court of that State.

(b) That the doctrine above stated as the true construction of section 5198 has been overruled by the case of Brown *vs.* Marion National Bank, 169 U. S. 416.

The first contention is completely met by the impregnable reasoning of this court in the case of—

Farmer's National Bank *vs.* Dearing, 91 U. S. 33—

in which case it is clearly shown that not only upon principle and authority, but for the most obvious reasons of public policy, the decisions of this court construing the sections of the National Bank Act must prevail over decisions of the State courts.

The second contention is wholly unsupported by the case cited in support of it.

Brown *vs.* Marion National Bank, *supra*.

In that case the only question before this court under the writ of error and upon the record, was whether the inclusion of concededly usurious interest in the amount of a new note changed the character of the interest so included, made it part of the principal of the note, and protected it against the operation of section 5198.

There is nothing whatever in the language of this court in the case last cited, which in any wise conflicts with the doctrine heretofore established as the true construction of said section 5198.

The case in 169 U. S. furnishes a complete answer to the contention set up by the fifth assignment of error as to the rate of interest upon the judgment, for the opinion in that case expressly states that the right of the defendant is to insist that judgment be given "only for the original principal debt *with interest at the legal rate from the commencement of the suit.*"

In this case the note bore 8 per cent interest, the legal rate in Missouri, when reserved in writing, and the court below only allowed interest at that rate from the date of the judgment.

Even if the court should be of opinion that the rate of interest should be 6 per cent, it would be no ground for reversal, the court having full authority to modify the judgment below.

Upon the whole case, it is respectfully submitted that the judgment below was right and should be affirmed.

JNO. RIDOUT,
Attorney for Defendant in Error.